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Dear Sir or Madam

**Re: Submission: Not-For-Profit Sector Tax Concession Working Group Discussion Paper
University Sector - November 2012**

We understand that you are seeking input from stakeholders in relation to the Not-For-Profit Sector Tax Concession Working Group Discussion Paper ("the Discussion Paper") released in November 2012.

By way of background, Moore Stephens Melbourne Pty Ltd is a leading accounting firm that works extensively in the University Sector and has a strong understanding of the tax issues impacting the University Sector.

Our Clients

The Universities that Moore Stephens provides taxation advice, includes:

University of Melbourne	University of Tasmania	James Cook University
Monash University	Australian National University	Flinders university
Deakin University	University of Canberra	University of Western Australia
RMIT	University of Sydney	Edith Cowen University
Latrobe University	University of NSW	Murdoch University
Swinburne University	Griffith University	Curtin University
Victoria University	The University of New England	Macquarie University
University of Ballarat	The University of Wollongong	

General Comments

The University Sector supports a review that focuses on a fairer, simpler and more effective way of delivering support through tax concessions to the NFP Sector. The University Sector faces significant challenges over the coming years as Government funding decreases and Universities increasingly rely on alternative sources of funding. Therefore, it is critical that any changes do not impact on the financial viability of the University Sector that is one of Australia's leading export industries.

The critical issues for the University Sector are:

- Universities must retain their income tax exempt status
- Refunds of franking credits must continue to be available to Universities;
- A specific carve out should be provided for Universities from the "In Australia" special conditions that are included in the Tax Laws Amendment (Special Conditions for NFP Concessions) Bill 2012. Without a specific carve out it is likely that a number of Universities would lose their Deductible Gift Recipient Status;
- The GST Concessions must continue to be available to the University Sector as material investments have been made in infrastructure which has utilised these GST Concessions. Any changes which result in any retrospective adjustment event under Division 129 of the GST Act would be not supported by the University Sector and will be strongly opposed by the Sector;
- The current differences in FBT exemptions and rebates are confusing. A consistent framework for all charities should be put in place and University should be able to access the same per employee exemptions or rebates as other charities.
- Tax exempt bodies should be allowed to access the FBT minor benefits exemption.

Current University Sector Taxation Status

We outline below the current taxation status of Universities;

1. Universities are classified as charitable institutions and as such are income tax exempt
2. Universities raise funds from the public and past students for research and educational activities and as such would not be supportive of any change that impacts on their DGR status
3. Universities have assessed the increased yield from investing in Australian Companies and as such any alteration to the Franking Credit refunds may alter the investment strategy based on the lower income yield rather than provide any additional funding to Government
4. Universities are not eligible to receive either the FBT Rebate or utilise the FBT Thresholds and as such receive no FBT Concessions that are available to other Not for Profit Organisations
5. Universities have invested hundreds of millions of dollars in infrastructure that should the GST Concessions alter may have a negative financial impact via Division 129 of the GST Act.
6. In the event that any tax, FBT or GST avoidance is occurring, the University Sector supports any changes in Legislation to limit this tax avoidance.

Comments Regarding the Consultation Paper

The University Sector understands that the reforms are designed to deliver a balance financial outcome. It is therefore extremely difficult to recommend the extension of a taxation concession without having an understanding of the corresponding reduction in another taxation concession.

The University Sector's preference is that the critical areas such as franking credits, GST Concessions and DGR status remain unchanged.

The current review of the "Not for Profit Sector" whilst welcomed by the University Sector appears to classify all Not for Profit entities together which we believe makes it extremely difficult to canvass meaningful views from across the Sector.

We believe that it would be more constructive to classify entities into:

- Small (<\$6Million),
- Medium (\$6 Million to \$50 Million) and
- Large (>\$50 Million).

All Universities would all be classified as Large.

The matters relating to governance, taxation and reporting could then be managed based on the category of entity.

The University Sector is currently managed and governed via State Government Acts of Parliament and audited by the relevant State Auditor General's Office. As such many of the Discussion Documents released to date will require changes to State Legislation and imply that appropriate governance and management practices are not in place within a University environment.

The University Sector believes that Large Charitable entities such as Universities should maintain all of the tax concessions currently available being;

- Charity Status
- DGR Status
- Refund of Imputation Credits
- GST Concessions.

Large Charities should represent a low risk to both Treasury and the Australian Tax Office given their ownership structure and levels of governance required and as such should be treated differently to Small and Medium charitable entities.

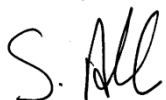
As such the bundling of all "Not for Profit" entities into one "pot" is not constructive from implementation perspective given the issues across each category of charity is based on their size, financial resources and levels of staff. We recommend that categories be considered whereby consultation can be more meaningful based on the entity size which dictates issues more relevant to those organisations.

We have discussed our responses with the majority of University Tax Managers and have outlined our supporting reasons in further detail in the attached Annexure.

Further Information

If you require further information or have any queries with regard to our submission please contact Steven Allan or Stephen O'Flynn on (03) 8635 1800.

Yours faithfully



Steven Allan
MOORE STEPHENS
MELBOURNE PTY LTD

Annexure

CHAPTER 1 — INCOME TAX EXEMPTION AND REFUNDABLE FRANKING CREDITS

1. What criteria should be used to determine whether an entity is entitled to an income tax exemption?

The common law meaning of charity includes a University. Therefore, provided that common law charities continue to be tax exempt we have no further comments.

2. Are the current categories of income tax exempt entity appropriate? If not, what entities should cease to be exempt or what additional entities should be exempt?

The University Sector would be extremely disappointed if any submissions received indicate that Universities should not be classified as “charitable”. The advancement of education has always been classified as charitable and as such all Universities should maintain their charitable taxation status.

4. Does the tax system create particular impediments for large or complex NFPs?

The current review of the “Not for Profit Sector” whilst welcomed by the University Sector appears to classify all entities together.

We believe that it would be more constructive to classify entities into

- Small (<\$6 Million),
- Medium (\$6 Million to \$50 Million) and
- Large (>\$50 Million).

Universities would all be classified as Large.

The matters relating to governance, taxation and reporting could then be managed based on the category of entity.

The University Sector is currently managed and governed via State Government Act of Parliament and audited by the relevant State Auditor General’s Office. As such many of the Discussion Documents released to date will require changes to State Legislation and imply that appropriate governance and management practices are not in place within a charitable entity.

The University Sector believe that as a Large Charitable entity that it should maintain all of the tax concessions currently available being,

- Charity Status
- DGR Status
- Refund of Imputation Credits
- GST Concessions.

Large Charities should represent a low risk to both Treasury and the Australian Tax Office given their ownership structure and levels of governance required and as such should be treated differently to Small and Medium charitable entities.

As such the bundling of all “Not for Profit” entities into one “pot” is not constructive from implementation perspective given the issues across each category of charity is based on their size, financial resources and levels of staff.

5. Should other types of NFPs also be able to claim a refund of franking credits?

We believe that the status quo should be maintained.

We are mindful that should this concession be expanded that corresponding savings are required from within the Not for Profit Sector.

The University Sector should continue to be eligible to claim a refund of franking credits and believe that there should not be an expansion of entities that are eligible if any offsetting savings impact any of the tax concessions provided to Universities discussed at question 4.

6. Should the ability of tax exempt charities and DGRs to receive refunds for franking credits be limited?

We consider that the status quo should be preserved.

The University Sector does not believe that any limitations should be applied to the refund of franking credits.

The refund of franking credits is effectively a refund of tax paid by another taxpayer and as such is not a real cost to the Taxation System.

In summary if limits are placed on the refund of franking credits which have the effect of reducing the income yield from investments the University Sector will review their investment strategies to reflect this yield reduction.

9. Should the threshold for income tax exemptions for taxable NFP clubs, associations and societies be increased? What would a suitable level be for an updated threshold?

We consider that an increase in the tax free threshold for taxable NFP clubs, associations and societies is a good idea as it should:

- reduce the compliance burden for small NFP companies;
- reduce the regulatory burden on the ATO; and
- foster a simpler and efficient taxing system.

There are a number of student organisations and sporting clubs related to Universities that would benefit from higher tax exempt thresholds

CHAPTER 2 — DEDUCTIBLE GIFT RECIPIENTS

11. Should all charities be DGRs? Should some entities that are charities (for example, those for the advancement of religion, charitable child care services, and primary and secondary education) be excluded?

The University has no comment with regard to this matter.

We believe it is a matter for Government not necessarily the University Sector and as such the University Sector has no view apart from stating that the University Sector should be classified as charitable.

15. Would a fixed tax offset deliver fairer outcomes? Would a fixed tax offset be more complex than the current system? Would a fixed tax offset be as effective as the current system in terms of recognising giving?

We see no compelling reason to change the current approach. Most other forms of deductions are regressive as well. We doubt this would encourage additional giving for medium level income earners and could have a detrimental impact on the level of donations made by high income earners.

20. Are there any barriers which could prohibit the wider adoption of workplace giving programs in Australia? Is there anything the Working Group could recommend to help increase workplace giving in Australia?

The University Sector has workplace giving programs in place. These programs are generally not well supported however they are useful in highlighting that employers are supportive of staff providing donations and facilitating such payments.

The University Sector have no strong views either way as to whether they are useful in establishing a workplace giving attitude amongst employees.

22. Is there a need to review and simplify the integrity rules?

Our main concern relates to the proposed “in Australia” special conditions contained in the **Tax Laws Amendment (Special Conditions for NFP Concessions) Bill 2012 (“the Bill”)**. We appreciate that funds received from tax deductible donations should be spent in Australia. However, for Universities, that operate in an ever increasingly connected world, there is an increasing requirement to interact with the wider world. For Australian universities to be able to be a recognised for their research excellence and to stay competitive with their international competitors in the delivery of education services it is paramount that they be able to operate internationally without the threat of losing their DGR status. We strongly believe that the Bill needs to be amended and should not restrict a University as a whole from carrying out all of their operations in Australia. It should be sufficient for a deductible gift recipient (“DGR”) to clearly demonstrate that the funds received from deductible donations are spent in Australia.

If it is too difficult to legislate the above concept then a specific carve out should be provided for Universities from the “In Australia” special conditions that are contained in the Bill. Without a specific carve out it is likely that a number of Universities would lose their Deductible Gift Recipient Status;

By way of background a fund, authority or institution does not fail the “operates solely in Australia or pursues its purposes solely in Australia” test where its activities outside Australia are:

- Merely incidental to its operations and pursuit of purposes in Australia
- Are minor in extent and importance when considered with reference to its operations and pursuit of purposes in Australia

We have a number of concerns with the extent to which a University’s operations are considered to be merely incidental or minor in extent and importance. Our discussions with Treasury officials indicate that if a University funds the establishment of an overseas campus that this is likely to result in the failure of the “in Australia” special conditions. We are aware of at least 6 Universities that have established campuses overseas and almost all Universities have international operations of some description. This type of activity will no longer be allowed in the future without the loss of DGR status. The loss of DGR status for Universities would result in the loss of the ability to raise donations from both private and public ancillary funds. It would also make it significantly more difficult to raise donations from the general public.

26. Should the threshold for deductible gifts be increased from \$2 to \$25 (or to some other amount)?

Our initial reaction is that \$25 is too high as it would disadvantage those who donate on an ad hoc basis or those from lower socio-economic circumstances.

The University Sector believes that the \$2 threshold should be maintained to assist low income taxpayers obtaining a tax deduction.

The following are concerns in relation to the increase of the deductible amount from \$2 to \$25 which were identified through our consultation with those in the Sector who receive a significant proportion of their donations from the general public:

- These charities receive a significant level of donations below \$25 particularly around the \$10 mark.
- The option provided is unclear as to whether the change in threshold will continue to be per donation or as a total of the donations made throughout the year.
- A significant number of donors contribute on a regular basis of say \$10 per month - how would this be impacted?
- Given the existing fundraising requirements for charities raising funds from the public the reduction in compliance costs was not considered significant.
- A significant number of their donors commence their giving through say a \$10 donation and then increase frequency or amount over time. To deny deduction at this initial stage in the giving relationship could result in fewer actually developing a giving approach ultimately resulting in a small potential donor pool.
- It was generally considered that this option would actually reduce donations not encourage more donations.
- This option could act as a deterrent for the youth in our community beginning to make a positive contribution to this world through their financial means.

CHAPTER 3 — FRINGE BENEFITS TAX CONCESSIONS

31. Should salary sacrificed meal entertainment and entertainment facility leasing benefits be brought within the existing caps on FBT concessions?

As identified in the discussion paper, the exclusion on caps on meal entertainment and entertainment facility leasing benefits are being exploited and offending the principles of fairness. Accordingly, we are of the view that it would be reasonable to incorporate salary sacrificed meal entertainment and entertainment leasing benefits into the capping system.

32. Should the caps for FBT concessions be increased if meal entertainment and entertainment facility leasing benefits are brought within the caps? Should there be a separate cap for meal entertainment and entertainment facility leasing benefits? If so, what would be an appropriate amount for such a cap?

We do not see the need to have a separate cap. It should be incorporated into the other caps.

We consider that the caps should be increased because they have not been increased for many years. In addition this would also be a trade off for bringing the salary sacrificed meal entertainment and entertainment leasing benefits within the capping system.

33. Are there any types of meal entertainment or entertainment facility leasing benefits that should remain exempt/rebateable if these items are otherwise subject to the relevant caps?

Yes all meal entertainment or entertainment facility leasing benefits (other than salary sacrificed amounts) should continue being exempt / rebateable.

34. Should there be a requirement on eligible employers to deny FBT concessions to employees that have claimed a concession from another employer? Would this impose an unacceptable compliance burden on those employers? Are there other ways of restricting access to multiple caps?

We consider that restricting access to multiple caps would not be workable as it would impose excessive compliance burdens on NFPs. Perhaps only where there is common control could access to multiple caps be restricted.

36. Should the limitation on tax exempt bodies in the minor benefits exemption be removed? Is there any reason why the limitation should not be removed?

The University Sector believes the limitation on exempt benefits for tax exempt bodies should be removed.

The limitation on tax exempt bodies accessing the minor benefits exemption for tax exempt body entertainment is one of the major compliance burdens that annoy tax exempt employers. We recommend that the limitation be removed on the basis that it causes too much of an administrative burden for limited tax revenue.

It is not clear why the tax exempt Sector is not able to access the same concession as all other employers. The difference in treatment makes it difficult to train staff that are new to the tax exempt Sector to ensure that FBT is paid on minor tax exempt body meal entertainment benefits.

37. Is the provision of FBT concessions to current eligible entities appropriate? Should the concessions be available to more NFP entities?

The current differences in FBT exemptions and rebates are confusing. A consistent framework for all charities should be put in place and Universities should be able to access the same per employee exemptions or rebates as other charities.

Tax exempt bodies should be allowed to access the FBT minor benefits exemption.

The University Sector receives no concessions with regard to the FBT Rebate or Threshold. The University Sector was specifically excluded when the Legislation was introduced. The University Sector believes that unless there is a Policy outcome that it is unaware of that the FBT Rebate should be expanded to include the University Sector.

38. Should FBT concessions (that is, the exemption and rebate) be phased out?

No they are vital for NFPs to be able to attract staff and consequently deliver their services to the community.

39. Should FBT concessions be replaced with direct support for entities that benefit from the application of these concessions?

This would impose additional burdens on NFPs and is not a preferred approach.

40. Should FBT concessions be replaced with tax based support for entities that are eligible for example, by refundable tax offsets to employers, a direct tax offset to the employees or a tax free allowance for employees?

We consider that a tax free allowance would be useful. All others options do not necessarily mean that these benefits will create an attraction for employees to work in the NFP environment.

41. FBT concessions be limited to non-remuneration benefits?

The provision of benefits to employees has developed in the last couple of decades. Many of the benefits provided to employees such as iPads, Laptop Computers and Mobile Phones are accepted as having some business and private usage. Many staff also have novated car leases where there is a level of business and private expenditure with regard to their motor vehicles.

The use of the term “non remuneration benefits” is not a term that is commonly used within the University Sector and as such the University Sector would not support any possible changes which are not clear. Universities for example allow the salary packaging of car parking and gyms which are provided to students in the ordinary course of the University business.

The University Sector believes that recent announcements with regard to non-remuneration benefits has been detrimental to the provision of in-house benefits to staff and would not support any expansion of this area unless a clear scheme is identified which is not within the spirit of the Policy intent.

CHAPTER 4 — GOODS AND SERVICES TAX CONCESSIONS

43. Does the existing fundraising concession create uncertainty, or additional compliance burdens, for NFP entities that wish to engage in fundraising activities that fall outside of the scope of the concession?

The fundraising concessions are not extremely well known across the industry. The rules regarding fundraising events such as auctions and dinners are also complex. The compliance costs with regard to determining market values and assessing “material benefits” are also extremely subjective.

The University Sector supports any simplification of the fundraising guidelines to reduce the administrative burden and subjectiveness of the method by which tax deductions are calculated.

44. Would a principles-based definition of the types of fundraising activities that are input-taxed reduce the compliance burden for entities that engage in fundraising?

The University Sector support a principles-based definition of fundraising activities that are input taxed.

45. Should current GST concessions continue to apply for eligible NFP entities?

This matter is extremely sensitive to the University Sector as this has a material impact on a number of capital projects which have been undertaken and financed by the University Sector.

The University will not support any retrospective application of the GST concessions. For example should the GST concessions be adjusted in any manner the adjustment periods in Division 129 of the GST Act should not apply due to any Legislation changes.

The University Sector would strongly oppose any changes to the GST Concessions resulted in a material financial detriment to the University Sector which would need to be passed onto the students.

46. Are there any other issues or concerns with the operation of the GST concessions in their current form?

No

47. Would an opt-in arrangement result in a reduced compliance burden for charities that would otherwise need to apply apportionment rules to supplies made for nominal consideration?

No. An opt-in arrangement would either increase the compliance burden or reduce the revenue from non-commercial supplies. Firstly, the compliance burden is increased if the opt-in arrangement is to treat all supplies as input-taxed supplies because it is administratively very cumbersome to implement systems and controls to ensure GST is not claimed on the acquisitions related to input taxed supplies. Secondly, revenue is reduced if the opt-in arrangement is to treat all supplies as taxable supplies, as the proportion of non-commercial revenue previously GST free would become subject to GST.

- 48. If an opt in arrangement is favoured, would the preference be to treat the supplies as taxable or input taxed? Why?**

Neither treatment is preferable as both will negatively impact the NFP sector, refer to answer for Q47.

- 49. Is there an alternative way of reducing the compliance burden associated with apportionment for supplies made for nominal consideration?**

No